Supreme Court, U.S.
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No. 08-456

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES SISSON and the

CHARLES SISSON REVOCABLE LIVING TRUST,

Petitioners,

v.

CYNTHIA G. WILCOX,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

# PETITION FOR A WRIT OF CERTIORARI

Charles Sisson, Petitioner

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## QUESTONS PRESENTED FOR REVIEW

1. Rules 59(b) and 60(b) may not mandate the automatic review of a verdict, but at what point is the refusal to grant a rehearing a violation of Petitioner's rights to due process guaranteed by the Fourteenth Amendment? In the instant case, four individuals can testify the foundation witness for the plaintiff, who prevailed, confessed after the trial that his testimony was purchased, and two former employees have been located with independent knowledge of the champerty, and yet the petitioner was denied his request for evidentiary hearings to investigate these developments.

2. Can summary judgment be imposed against petitioner if he has demonstrated that there is good cause to question the premises underlying the original verdict? How can the "standard of care" appropriate for lawyers to document confessions by witnesses be inadequate for the court to grant entry of same as evidence?

3. How can the court grant "reasonable" fees on the basis of a fee structure devised for Fortune 500 companies when the dispute is a private home defects lawsuit?

4. Are an individual's rights to competent legal advice infringed upon if he declares bankruptcy as a means of advancing his defense, then cannot retain counsel because potential attorneys cannot accept the delay in compensation required by the bankruptcy court?

**PARTIES TO THE PROCEEDING**

Petitioners are Charles Sisson and the Charles Sisson Revocable Living Trust. They are appellants in the Court of Appeals and defendants in the United States District Court for the District of Columbia. Respondent is Cynthia G. Wilcox. She is an appellee in the Court of Appeals and plaintiff in the United State District court for the District of Columbia.

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## PETITION FOR WRIT OF CERTIORARI

Charles Sisson respectfully petitions the Supreme Court for a writ of certiorari to review the judgment of the D.C. Court of Appeals in this case.

## CITATIONS OF OPINIONS BELOW

The June 18, 2008 Opinion of the United States Court of Appeals denying the *en banc* motion (Appendix B) which affirmed the United States Court of Appeals decision dated April 8, 2008 (Appendix A) affirming the bench decision of the United States Federal Court for the D.C. Circuit.

## JURISDICTION

The judgment of the D.C. Court of Appeals was entered on June 18, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS

The Due Process Clause of the Fifth Amendment of the United States Constitution provides in relevant part: "No person shall ... be deprived of life, liberty or property, without due process of law ...."

The Due Process Clause of the Fourteenth Amendment provides in relevant part: "No State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CASE

Petitioner was denied Due Process. Charles Sisson, who served in the U.S. Army during the Vietnam War, has had a distinguished career as a senior economist for the International Monetary Fund for nearly 30 years, and holds a Ph.D. in economics. This petition seeks review of the Court of Appeals' summary judgment that effectively ratified a judgment in excess of $800,000 for damages and a similar amount for legal fees awarded by the United States District Court for the District of Columbia Circuit in favor of Respondent Cynthia Wilcox in a claimed damages suit. The appeal specifically requested evidentiary hearings to investigate compelling evidence the plaintiff had purchased the testimony of her foundation witness and the verdict was therefore compromised and consequently should be reversed.

This writ of certiorari is based on the fundamental premise that there are circumstances under which the proper administration of justice and due process requires the review of trial verdicts. What is remarkable about this case is that the trial judge and the appeals court adamantly reject a review of apparently compelling evidence obtained after the trial that the plaintiff purchased the crucial testimony of her foundation witness, thus invoking issues of fraud, conspiracy to defraud and obstruction of justice in the verdict, and the Appeals Court has granted plaintiff summary judgment heedless of its obligation in Taxpayers Watchdog, Inc. v.

Stanley, 819 F.2d 294 (D.C. Cir. 1987) to accord petitioner the benefit of doubt in his assertions. These developments are difficult to reconcile with the official motto of the District of Columbia, "Justice for All", unless it has been tempered by the Orwellian vision that "Some animals are more equal than others".

The original lawsuit was predicated on a number of assertions that defied common sense. The plaintiff alleged that the defendant, who had developed nearly one hundred housing units in the District of Columbia without any indication of defective craftsmanship, had deliberately defrauded the plaintiff by selling her a luxury house in which all the building systems (plumbing, electrical, heating and cooling) were so defective they had to be replaced in their entirety, and the structure of the house was in danger of imminent collapse. These assertions were belied by inspections carried out by official District of Columbia Regulatory Agency (DCRA) building inspectors, and the report of a professional home inspector hired by the plaintiff, who found only a few minor issues to be addressed before settlement. Plaintiff portrayed the convenient timing of discovering these "defects" in existing house systems at the very time her renovation rendered them "obsolete" and required their removal as the wildest of coincidences.

The trial judge made a series of rulings that effectively supported these allegations. She found that the plaintiff was within her rights to prevent the defendant from correcting any "defects" and indeed from even having a right to even inspect them to prepare a legal defense. This contradicted what even all of plaintiff's witnesses agreed were industry standards affording installers of allegedly defective units the opportunity to inspect alleged defects, and effectively denied defendant an opportunity to prepare his defense. In doing so, the trial judge turned the spoliation inference--that the party

destroying evidence does so to prevent it from being used against himself at trial--on its head, arguing that the failure of defendant to offer evidence (which he could not do, being barred by the plaintiff from entering the house) was evidence of his guilt, and seemingly overlooked the fact that spoliation of evidence is itself a crime in federal jurisdictions. She further buttressed the plaintiff's case by embellishing the credentials of the plaintiff's foundation witness, her general contractor Mr. Frank, designating him an "uncompensated fact witness" despite the large volume of work he had undertaken in support of the plaintiff's lawsuit and the public record they were business partners in other undertakings, and defended this finding in court by resolutely denying defendant any opportunity to challenge the witness' independence during trial.

These arguments were raised with the U.S. Appeals Court, which issued its ruling in a couple of days and in four words, "This appeal is denied". This impressive support of the lower court ruling denied defendant of any despositive explanation how spoliation of evidence and denial of an opportunity to explore how a business partner could be deemed an "uncompensated fact witness" accorded with existing case law.

Just prior to oral arguments in the appeal, Mr. Frank made a voluntary visit to the office of defendant's counsel, and four witnesses swear that he then confessed that the plaintiff had purchased his testimony, counsel for the plaintiff was complicit in the scheme, and further identified two former employees who had independent knowledge of the champerty. Defendant quickly submitted a Rule 59(b) motion to the court asking for evidentiary hearings to explore this development, but by that time Mr. Frank refused to support the motion, apparently deciding it was not in his best interest to admit to perjury and conspiracy to defraud. In the

absence of a confession, the trial judge refused to hold evidentiary hearings, despite the attachment of affidavits (appendices C and D) from two witnesses to the meeting swearing that Mr. Frank had in fact confessed.

The trial judge's refusal to investigate what appeared a clear fraud on the court severely constrained defendant's efforts to advance any obstruction of justice issues. Finally, he was advised that by declaring bankruptcy and ceding control over his assets to a trustee, he could advance his defense under Section 2004 and require Mr. Frank to testify about these matters under oath. Mr. Frank bitterly opposed these efforts, and it was more than a year afterward that he was obliged to answer questions about what happened that day. He denied any recollection of discussing the matter at the meeting, but did admit that the plaintiff had tried to purchase his testimony, and that plaintiff had compensated him for his work supporting her lawsuit, contradicting his designation as an "uncompensated fact witness" at trial. His remarkable denial of even discussing the champerty issue during the meeting was in direct contradiction to the information provided by the other three participants to the meeting and telephone records of conversations establishing this agenda preparatory to the meeting, and his denial of any arrangement is in stark contradiction to the information provided by two former employees, one of whom has submitted a supporting affidavit (Appendix E). This evidence was submitted to the trial judge in a Rule 60(b) motion for evidentiary hearings, who in denying the motion ignored the compelling evidence that Mr. Frank was perjuring himself and only focused on Mr. Frank's denials. Perhaps concerned that other reviewers might find his testimony less convincing, the judge acted to support her decision by declaring further that his testimony was actually irrelevant as it was "painstakingly and independently"

corroborated by other witnesses, belying her previous actions to bolster his role in the proceedings by declaring and preserving against all challenges his designation as an "uncompensated fact witness", and her reliance on his testimony as a foundation witness in the original verdict.

Upon appeal, the Appeals Court granted plaintiff's motion for summary judgment in a one-paragraph decision. It further concurred that plaintiff should be awarded legal fees in this house defects case on the basis of the fee structure her legal firm normally charged Fortune 500 companies.

## Factual Background

Ms. Wilcox purchased a house from Charles Sisson in June 2000. After her lawyer barred Mr. Sisson from entering her property a few weeks later, Ms. Wilcox initiated a massive renovation project costing some two million dollars, in the process reconfiguring her house inside and out and replacing all the windows with bullet-proof glass. She was not a typical homebuyer. As her renovation drew to a close, she filed suit against Mr. Sisson, claiming that even though he had previously renovated about one hundred housing units without serious defects, in this case construction "defects" required all the house systems (heating, cooling, plumbing, electric, and structure) be removed in their entirety—by the wildest of coincidences just as her renovation project made them obsolete and required they be replaced anyway. Mr. Sisson was never allowed to correct or even inspect the alleged "defects", which had been conveniently removed before the suit was filed, and Ms. Wilcox never attempted to negotiate a settlement prior to filing suit, nor did she ever propose

Mr. Sisson repurchase the house, a common remedy for disgruntled purchasers.

The trial featured some remarkable rulings and oversights which considerably advanced the plaintiff's case. It differed from usual construction defect lawsuits, as neither side relied on testimony from independent construction experts who had witnessed the alleged "defects". Mr. Sisson couldn't; the "defects" had been eliminated while he was barred from the house. The judge approved this "spoliation" of evidence, even though destruction of evidence is a criminal act in federal jurisdictions--the spoliation inference being that a party destroys evidence in the consciousness of guilt or other motivation to avoid the evidence. As finder of fact in this instance, the judge did not conclude that the destroyed evidence would have been detrimental to the spoiler (Ms. Wilcox), but instead turned the spoliation inference on its head by finding that the great imbalance between her submissions and Mr. Sisson's (without access he had no evidence to offer) was itself evidence of his culpability.

Ms. Wilcox could have had any independent consulting firm verify legitimate claims, but with one exception (see below) chose to rely on testimony from her construction team, individuals who had been hired for the renovation and profited by some twenty-five cents on every dollar of "defects" they identified, giving them what seemed an incentive to expand the scope of "defects" they found. Nonetheless, the judge denied any such incentive existed, and even carried her determination to another level, designating Ms. Wilcox's general contractor Mr. Frank an "uncompensated fact witness", despite his admissions of extensive work gathering evidence for and coordinating the preparation of trial testimony. At trial the

judge defended this designation by sustaining all of Ms. Wilcox's objections to questions directed at uncovering the fiduciary relationship between her and Mr. Frank, even though efforts to conceal the nature of their relationship had been sundered just before trial, when Mr. Frank sued Ms. Wilcox for nonperformance under their partnership.1

Unable by Ms. Wilcox's refusal to allow him to inspect the "defects", Mr. Sisson relied on the District of Columbia Regulatory Agency's (DCRA) field inspections, during which truly independent experts approved construction at the house as meeting D.C. building code requirements. The judge therefore took some effort in her decision to void the "final" structural and plumbing DCRA inspections, in the latter case without recourse to any supporting evidence whatsoever, presumably in the belief that by doing so she removed all credible evidence denying Ms. Wilcox's claims that these building systems had to be replaced in their entirety. 2 Unfortunately for this theory, the "final" DCRA inspections are irrelevant to her conclusion; they have nothing whatsoever to do with the systemic integrity of building systems. "Final" inspections are undertaken after construction is complete and only assess proper installation of house fixtures such as sinks

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1 In his deposition obtained under the bankruptcy code, Mr. Frank readily admitted he had indeed been compensated for this work, in a very non-transparent way.

2 The judge airily dismissed the only other source of evidence available to Mr. Sisson, the testimony of his general contractor, who testified that it was "the best house I ever built". This general contractor had previously built two houses for Mr. Sisson, including a similar house to the one purchased by Ms. Wilcox that had been sold to two lawyers who never even bothered to call with a complaint.

and lights, which Ms. Wilcox never disputed. Systemic integrity of house systems is assessed at an earlier stage in the DCRA inspection process, during the "close in" inspections undertaken before drywall is installed, when the building systems are visible and can be properly inspected. As the validity of the "close in" inspections was never challenged, these DCRA inspections have to be recognized as the only available independent expert evidence on "defects," and they conclude all the house systems were correctly installed, evidence conveniently "overlooked" by the judge.

With a judge willing to accept so many "anomalies" from one side in the presentation of their case, the trial outcome was never seriously in doubt, but still the award was staggering. Ms. Wilcox obtained nearly a million dollars in damages, and even more in legal fees, another million for the services of Williams & Connelly, who were awarded the fees they normally charge for representing Fortune 500 companies in a private home defects case. This award exceeded the amount Ms. Wilcox paid for the house and ultimately Mr. Sisson declared bankruptcy.

Developments after the trial were even more remarkable. Mr. Frank, the plaintiff's general contractor who served as her foundation witness, expressed concerns that justice had not been served as soon as the verdict was announced, but was unwilling to revisit his testimony so long as there was separate litigation between himself and Ms. Wilcox. When these issues were resolved nearly a year later, he voluntarily came to a meeting at the office of Mr. Sisson's counsel, Mr. McMahon. On that occasion three witnesses heard him voluntarily confess he had accepted Ms. Wilcox's offer to purchase his testimony in exchange for a quarter of the award, identified two former

employees who had independent knowledge of the champerty, and stated further that her counsel (and his friend) was complicit in the arrangement, raising issues of a fraud being perpetrated on the court. According to Mr. McMahon, Mr. Frank subsequently got cold feet, expressing fear of retribution from Ms. Wilcox, and the affidavit prepared memorializing his confession went unsigned. Mr. McMahon then submitted affidavits from two of the three witnesses (Appendices C and D) and another from one of the individuals Mr. Frank had identified as having independent knowledge of the champerty (Appendix E) in support of motions for the court to hold evidentiary hearings, with a view to vacate the original judgment on the basis of corrupt evidence. The judge rejected it, denying the affidavits as evidence.

In desperation, Mr. Sisson initiated his own investigation, which necessarily had to be limited because the other parties would not willingly participate, and he focused on the right of interrogation he was entitled to under the bankruptcy code if he turned his assets over to a trustee. This considerably raised the cost of failing to gain a reconsideration of the verdict, but the opportunity to promote justice seemed worthy of the effort. Doing so, he was finally able to put Mr. Frank under oath despite his vigorous and determined legal opposition. On that occasion, more than a year later, Mr. Frank attempted to dismiss the significance of his voluntary appearance at Mr. McMahon's office by spinning a tale how he and defendant's attorney had become friends, even though they had never seen each other in the year following trial. He denied having confessed to making any financial arrangement regarding his testimony, and did not remember any affidavit memorializing his confession. These artifices don't hold water and almost certainly

constitute perjury (see below). However, his testimony did divulge several important developments, including admissions Ms. Wilcox had attempted to purchase his testimony (saying he refused as "it would be wrong") and also that he certainly wasn't an "uncompensated fact witness" as he was paid to support trial testimony in a very non-transparent way, and was indeed partner with Ms. Wilcox in another business venture (see also Appendix E for corroboration by another party).

This deposition, together with an affidavit prepared by Mr. Sisson referencing his telephone records immediately prior to the meeting that documented conversations between Mr. Frank and himself, demonstrating the meeting in Mr. McMahon's office had an agenda and was no social gathering, were submitted to the trial judge as part of another motion to hold evidentiary hearings. The trial judge likewise denied this motion, ruling that regardless of Mr. Frank's veracity or lack thereof, her verdict would stand as it was "painstakingly and independently corroborated" by testimony from other sources. This decision was corroborated by the U.S. Court of Appeals, which granted a motion for summary judgment from the plaintiff.

## REASONS FOR GRANTING THE WRIT

The ruling to deny evidentiary hearings on the alleged financial arrangement whereby the plaintiff would purchase the testimony of her general contractor/foundation witness was erroneous, for as shown below, there is compelling evidence that Mr. Frank believed such an arrangement existed, and his testimony at trial reflected such an arrangement. Moreover, the trial judge's finding that his

testimony was "painstakingly and independently" corroborated by other witnesses and therefore not crucial to her verdict does not correspond to the trial record. Furthermore, the court erroneously failed to consider the weight of the evidence under Rule 60(b)(3) and (b)(6) even though appellant presented these as additional grounds for relief.3

1. *There is compelling evidence that Mr. Frank confessed to an arrangement whereby the plaintiff would purchase his testimony.*

The trial judge accepted at face value Mr. Frank's deposition statement that he did not enter into a champerous arrangement with plaintiff, but there remains compelling evidence he committed perjury doing so. If he had nothing to hide, why did he so abjectly resist testifying under oath? All three witnesses to the meeting Mr. Frank voluntarily attended in Mr. McMahon's office say he confessed to his testimony being purchased, and that the plaintiff's attorney was complicit in the arrangement. Two of them have submitted affidavits, which are attached as Appendices C and D. Both the defendant and his counsel Mr. McMahon have phone company records of several conversations preparing an agenda with Mr. Frank just prior to the meeting in Mr. McMahon's office. Mr. Frank's appearance was not spontaneous, nor was it a mere social call, as he attempted to sanitize it. Why did he *voluntarily* appear at Mr. McMahon's office? Mr. Frank admits Mr. McMahon interrupted their private conversation to bring two individuals into the room to witness the proceedings.

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3 Fed.R.Civ.P.60(b)(3) provides grounds for vacating a judgment where, as here, the movant demonstrates that the judgment was affected by fraud, misrepresentation or misconduct of the other party.

Clearly they were doing more than making small talk. Mr. Frank identified two former employees who had independent knowledge of the champerty, who would have gone unrecognized otherwise. Mr. Frank agreed in his deposition that he and these former employees were on good terms and they had no grudge or other reason to submit false information about him, but one has submitted an affidavit attesting to the champertous arrangement, also reproduced as appendix E. As to the affidavit Mr. McMahon prepared for Mr. Frank's signature which he "doesn't remember", Mr. Mahon faxed a copy to Mr. Frank and discussed it with his lawyer, and plaintiff's own lawyer has admitted in writing discussing it with Mr. Frank. Tellingly, the percentage of the award Mr. Frank says in his deposition he turned down was the exact same share the three witnesses earlier recalled him saying he accepted. How convincing is Mr. Frank's story?

2. *The Trial Judge's Claim that Mr. Frank's testimony was "independently and painstakingly" corroborated is not supported by the trial record*

The trial judge, perhaps implicitly recognizing her reliance on Mr. Frank's damaged credibility might not be convincing, acted to discredit the significance of his testimony by declaring it was "painstakingly and independently corroborated" by other sources and thus irrelevant to her decision. The record does not support this bold and audacious statement, which is strikingly inconsistent with her efforts to bolster the significance of Mr. Frank's testimony during the trial, when she designated him an "uncompensated fact witness," sustained plaintiff's objections to every question defendant raised to explore his possible bias, and ignored the public record that he and the plaintiff were partners, then cited him in her verdict some

sixty times. Even though the plaintiff could easily have provided her one independent expert witness (a structural engineer) access to the alleged "defects" before she destroyed them, she instead chose to have him work from photographs taken at the direction of Mr. Frank, after he had enjoyed unrestricted and unmonitored access working on the renovation to the building site for months. If the "defects" were so obvious and manifold, why would the plaintiff have her expert work from photographs when she controlled access to the "defects"? This structural expert prefaced his testimony at trial by announcing his analysis would have been impossible without the representations of Mr. Frank, and subsequently sprinkled his testimony with frequent references to his contributions (see Appendix F). The cost expert for the plaintiff also cited the crucial contribution of Mr. Frank's representations in his testimony, complaining it wasn't easy to identify defects that have been removed (see Appendix G). The subcontractors who provided depositions all worked for Mr. Frank, and their testimony does not support the need to replace building systems (see the next section). Small wonder Mr. Frank could complain that he had done all the work and the plaintiff had gotten all the money. Processing all evidence through one person whose testimony is at issue seems a narrow definition of "independent", and relying on testimony from employees instead of independent experts doesn't seem "painstaking". If his testimony wasn't important, nay crucial, to the verdict, why did the judge take the trouble to designate him an "uncompensated fact witness" and then vigorously defend that status at the trial by denying all inquiries intended to prove otherwise?

3. *The Trial Testimony of Ms. Wilcox's Contractors Did Not Support the Need to Replace Building Systems*

The trial record clearly shows that the testimony of plaintiff's subcontractors did not demonstrate the need to replace building systems. These witnesses/ subcontractors were not entitled to invent construction standards, but were obligated to relate their assessments to building codes enforced by the District of Columbia, and failed to do so. Some examples make the point.

First, the judge concluded that the entire plumbing system for the house was defective on the basis of testimony that that the gas pipes were only "hand tightened". Again her conclusion does not follow from its premise, as the house plumbing system also includes all the hot and cold water supply lines, as well as the sanitary sewer system, so even if there were defects in the gas pipes, it would be a thin reed to argue that the entire plumbing system should be replaced. But the gas pipes were not defective. Any expert contractor, as Mr. Frank and his plumber claimed to be, would know that the tightness of natural gas pipe joints is neither a necessary or sufficient condition of systemic integrity. Out-of-round pipes can leak even if wrench-tightened by Samson, and in any case the tightness of pipe joints could only be verified by cutting them apart, hardly an operational test. The only test recognized by the DCRA is, as specified in the *International Gas Handbook,* the codebook used by the DCRA, to put the system under pressure overnight to see if it holds, as was done and approved during the "close in" inspection cited above. The plaintiff's cost expert Mr. Lofgrin testified no one ever reported smelling gas in the house, a simple but effective validation of the system's integrity, and in his testimony Mr. Frank admitted never performing any quantitative test on house systems whatsoever. The testimony of Ms. Wilcox's contractors

doesn't demonstrate that the plumbing system was replaced because of defects; rather, available evidence leads one to conclude it was replaced when plaintiff's project to build her "dream house" required a new pipe system to service relocated bathrooms, and any expert witness who testified otherwise almost surely perjured himself.

Second, the judge ruled that the heating and cooling ductwork in the house was defective and needed to be removed in its entirety. This claim was contradicted by trial testimony this ductwork was retained and reused in the areas of the house not reconfigured in Ms. Wilcox's massive remodeling project. These ducts were of course replaced where the walls containing existing ductwork were moved as part of the house renovation. When Mr. Frank was asked on the stand if house systems were replaced because of "defects" or because of the Wilcox renovation, he responded that as a high-end builder he couldn't warranty work he hadn't installed. This evasive response was not only not "the truth, the whole truth, and nothing but the truth", it was in fact false. He did reuse existing construction where the renovation allowed.

Indeed, Mr. Frank did finally admit under cross-examination that the electric systems in the house were not replaced because they were defective, but for cosmetic reasons in plaintiff's renovation. Why would one system be replaced for cosmetic reasons and not the others?

## THE COURT OF APPEALS DECISION VIOLATES PETITIONER'S RIGHT TO DUE PROCESS

. The trial raised a number of issues that seemed remarkable departures from due process and the

constitutional right to a fair trial. Two of the more significant of these were the trial judge's refusal to admit questions as to the integrity of Ms. Wilcox's foundation witness Mr. Frank, who had been falsely deemed an "uncompensated fact witness" despite the public record (a lawsuit filed just before trial) demonstrating they were partners, and her acceptance of plaintiff's spoliation of evidence, which severely limited Mr. Sisson's right to prepare his defense. These would appear to be difficult issues for the court review requested by Mr. Sisson to reconcile with the existing legal code, but the U.S. Appeals Court for the D.C. Circuit did not on this occasion require the usual weeks to prepare a detailed response to justify its decision in the context of the case body of law that has accumulated over the years. Its response was immediate, issued a couple of days later, and consisted of just four words: This appeal is denied.

The four witnesses that can aver Mr. Frank confessed that his testimony had been purchased would appear to present even more difficult issues, even if he declined to put it in writing for fear of retribution. He also identified two former employees who had independent knowledge of the champerty. All six of these individuals could testify in evidentiary hearings. Moreover, there were phone records of calls to set up the meeting and transmit the draft affidavit Mr. Frank ultimately refused to remember ever seeing, as well as the written statement from Ms. Wilcox's attorney that he had discussed this affidavit with Mr. Frank. Adding to these credibility woes were the misleading and almost certainly perjurous deposition and trial testimony. Surely in the name of justice evidentiary hearings to confirm the validity of the verdict are in order, especially as Bobby Bonds and Roger Clemmons are simultaneously under FBI investigation for

perjury and obstruction of justice when the evidence against them consists mainly of testimony from a known drug dealer anxiously trying to plea-bargain his way out of some hard jail time.

The appeal to the United States Court of Appeals for the District of Columbia Circuit, to reverse the trial judge's denial of the Rule 60(b) motion, was equally fruitless. On this occasion the Court of Appeals issued a summary affirmance of Ms. Wilcox's request that the appeal be denied—that is, they declined to even hear arguments why seven witnesses should testify under oath in a federal courtroom about the bribing of a witness. Breaking with their previous practice of summarily rejecting the motion without comment, however, on this occasion they did issue a one paragraph finding which exhibited in its own way a remarkable disconnect from the matters at issue (Appendix A).

It summarized its ruling by reference to Stanley, which reads in part

> "A party [Ms. Wilcox] seeking summary disposition bears the heavy burden of establishing the merits of his case are so clear that expedited action is justified. See Walker v. Washington, 627 F.2d 541 (D.C. Cir.) cert. denied, 449 U.S. 994, 101 S.Ct. 532, 66 L.Ed.2d 292 (1980). To summarily affirm an order of the district court, this court must conclude that no benefit will be gained from further briefing and argument of the issues presented. Sills v. Bureau of Prisons, 761 F.2d 792, 793-94 (D.C. Cir. 1985). *In addition, this court is now obligated to view the record and the inferences to be drawn therefrom 'in the light most favorable to [Mr. Sisson].'* United States v. Diebold, Inc., 369 U.S.

654, 655, 82 W.Ct.993,994, 8 L.Ed.2d.176 (1962)." (emphasis added).

It is hard to see how their decision to grant summary judgment to Ms. Wilcox (not hear any arguments) is consistent with this case law the appeals panel referenced, when six witnesses can provide affirming testimony that the decision was based on corrupt evidence, and the trial record amply demonstrates Mr. Frank's crucial role in providing evidence and supporting testimony. Surely the standard of care required of lawyers in documenting confessions, that they be properly witnessed, would establish the standard for court review of new evidence. Perhaps the inclusion in this panel of one of the three judges sitting on the previous appeal, when the court had specifically ruled that a different panel would hear the second appeal, was of some significance.

The appeals court ruling also cited two other cases in support of its decision, which also merit examination as one is distinguishable from this case and the other appears to support Petitioner's motion. In Cano v. Baker, 435 F.3d 1337, 1342-43 (11th Cir. 2006), the decision to deny evidentiary hearings was affirmed on the basis that the motion came more than thirty years after the trial, and would have vacated a decision in favor of the individual requesting the evidentiary hearings (the individual's views on abortion had evidently changed over the period). In the instant case, Mr. Sisson filed a motion under Rule 59(b) in a timely manner, within two weeks of the witness' confession and one year of the original court decision, which was converted to Rule 60(b) only when the trial judge denied the original motion after the one-year period had passed. ,All subsequent filings were timely, and the objective of evidentiary hearings was decidedly not to

reverse a decision in Mr. Sisson's favor. In Steverson v. Global Santa Fe Corp, 508F.3d 300. 305-06 (5th Cir. 2007), the trial court's decision denying evidentiary hearings was reversed not sustained and the original court decision vacated, supporting Mr. Sisson's request here. Significantly, the appeals court in this ruling relied on affidavits submitted by the appellant, which in the instant case were dismissed.

As discussed above, six witnesses can testify to and there is considerable documentation for the existence of a champerous relationship between plaintiff and her foundation witness, Mr. Frank. The existence of such an arrangement is prima facie evidence that evidence has been corrupted and the decision should be vacated, even if it can be represented that the witness was only paid to tell the truth (see Golden Door Jewelry Creations, Inc. v. Lloyds Underwriters Non-Marine Ass'n, 865 F. Supp. 1516, 1526 (D.Fla 1994)). But the foregoing has also demonstrated that the champerous arrangement went far beyond, in effect, a tip for prompt service. Mr. Frank laid the groundwork for the testimony of other witnesses. Not only were his representations of "defects" irrelevant to building code standards, but also they also directly contradict the evidence provided by the only independent expert witnesses who actually inspected and approved the house systems, the DCRA inspectors, during their "close in" inspections.

The whole point of the Rule 60(b) motion to examine the testimony of Mr. Frank is that he was instrumental in all aspects of evidence collection and presentation (including taking the photographs, calculating the damages estimate, and coordinating the activities of plaintiff's experts) for the plaintiff, and her evidence is

thereby contaminated and cannot be used in her behalf. If as under Stanley as cited by the Appeals Panel the record and inferences to be drawn therefrom in consideration of plaintiff's motion to grant summary judgment is to be interpreted in the light most favorable to Mr. Sisson, then the motion must be denied, as plaintiff has no uncompromised evidence to submit. Any decision based on evidence prepared by Mr. Frank (including the photographs) and submitted by plaintiff to the appeals panel to grant summary judgment on her behalf is judicial error.

It is particularly difficult to understand why the courts are not interested in hearing these issues on their own significance. In Kettenbach v. Demoulas 901 F. Supp. 486, 500 (D. Mass. 1995) Rule 60(b) movant was authorized to take depositions in light of hearsay evidence suggesting a previously undiscovered conspiracy in order to determine the necessity of an evidentiary hearing. Bribing a witness is a crime, and even attempting to do so, as Mr. Frank swears Ms. Wilcox did, can be. Conspiracy to defraud is a crime, and so is obstruction of justice. These issues are directed at the proper Administration of Justice, and constitute a gravitus that cannot be dismissed lightly, particularly as plaintiff's lawyer has been implicated. Why would anyone even try to bribe a witness (as Mr. Frank has sworn Ms. Wilcox did) unless they themselves thought it was crucial to their case? How could Ms. Wilcox have made her case without her foundation witness? Why are the courts so determined to prevent any further review of these developments? Fraud and perjury shouldn't be the basis for large judicial awards.

In sum, the lower courts in these totality of circumstances deprived Petitioner of Due Process. The

Fourteenth Amendment states: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." If a judge is to assume the authority of deciding the disposition of a case in the absence of a full and fair investigation by an independent party, then to prevent abuse of the 5th and 14th Amendments the facts in the matter need to be indisputable, as specified in Stanley. In the instant case, this high standard was not met by the trial judge, nor reached by the Court of Appeals in its ruling. Six witnesses have been identified who can testify that the plaintiff in the original lawsuit had purchased the testimony of her foundation witness, and as a rule of law his testimony and related evidence should be disregarded as hopelessly contaminated by the financial arrangement. The trial judge's efforts to distance her verdict from reliance on his testimony are unavailing and even contradictory to her efforts during the trial to bolster his credibility. An egregious miscarriage of justice has resulted and Petitioner's right to Due Process has been violated.

## ATTORNEY FEES

The appeal panel cited Copeland v. Marshall 641 F.2nd 880,901 (D.C. Cir. 1980) in its affirmance, but respectfully this decision is distinguishable from the instant case as it establishes an award for attorney fees in support of Title VII cases, to encourage individuals injured by discrimination to seek judicial relief, which might otherwise not be compensated. This case does not involve a class-action suit, nor was the legal team in any danger of

not receiving compensation for their work, as they collected fees in advance of work performed. There remain three separate grounds for an adjustment in the award for plaintiff's legal fees:

First, the evidentiary hearing requested above should establish the claim that the decision was based on corrupt evidence and should be vacated, and would also address the complicity of plaintiff's counsel in criminal aspects of the conspiracy. The affidavits from the witnesses to Mr. Frank's confession (see Appendices C and D) aver that he implicated plaintiff's attorney in this arrangement, but insisted his cooperation (ultimately not forthcoming) was contingent on his friend (plaintiff's attorney) not being brought into these proceedings. "Reasonable" legal fees do not encompass work done in support of fraudulent decisions, and particularly not if counsel is also implicated in the fraud.

Second, as argued in defendant's motion to oppose summary judgment, the award of requested legal fees in this case represented de facto abolition of the term "reasonable" (Planells v. Howard University, 34 FEP Cases 66, 1984 U.S. Dist. LEXIS 19338, *6 (D.D.C. 1984)). It is not "reasonable" to reward a firm which typically represents Fortune 500 companies their standard fee for a private home defects case. If this represents reasonable compensation, how many of these lawsuits have such a large and prominent law firm as Williams & Connelly undertaken in the past five years? The fee is in excess of the judgment awarded for damages, and approximately triple what lawyers typically receive in cases where their fees are determined by a contingency arrangement. See Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 718 (5th Cir. 1974) (It is open knowledge that various types

of legal work command differing scales of compensation").

Third, the award of legal fees included specific legal work to prepare a brief asserting defendant perpetrated a fraud on the trial court by moving financial assets out of bank accounts to avoid collection efforts4. Defendant utterly refuted this calumny in a response brief demonstrating that the funds were moved prior to and for reasons completely unrelated to any court action, and requested restitution of costs to refute this libelous assertion. For whatever reason, the trial judge again could not bring herself to rule in favor of the defendant, and in not ruling, not only failed to reimburse defendant for unnecessary legal expenses, but subsequently confirmed an award of legal fees for action in which plaintiff did not prevail. This is error. The case of Copeland v. Marshall cited by the Appeals Panel specifically states that "no compensation should be paid for time spent litigating claims upon which party seeking fee did not ultimately prevail..."

## RIGHT TO COUNSEL

In his efforts to extract testimony on the fiduciary arrangement between the plaintiff and her foundation witness Mr. Frank, in the absence of support by the trial judge the defendant was obliged to accept the extraordinary step of declaring bankruptcy and thereby avail himself of

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4 In this assertion by plaintiff that defendant had committed a fraud on the court, she never referenced any legal requirement for the judge or defendant's attorney to be involved, as she argued in motions opposing the converse here. Again, the witnesses swear Mr. Frank's did admit the plaintiff's counsel was complicit in the scheme (see Appendices C and D).

its evidentiary powers under Rule 2004 of the bankruptcy code. While this had the intended effect of finally mandating testimony under oath which supported his contention that Mr. Frank's testimony at trial was tainted by financial considerations, it had the undesirable side-effect of limiting his ability to engage legal counsel, and in mounting his appeal of the lower court decision as well as this writ of certiorari Petitioner was unable to secure competent legal counsel. Attorneys were unwilling to undertake the legal work necessary to mount an effective defense in advance of payment, thereby depriving appellant of his right to adequate legal representation.

## CONCLUSION

For the foregoing reasons, Charles Sisson respectfully requests the Court to grant his Petition for a Writ of Certiorari.

Respectfully submitted,

_____

Charles A. Sisson
Petitioner
9730 Maury Road
Fairfax, Virginia 22032
(703) 371-9981

APPENDIX A—JUDGMENT OF UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT DATED APRIL 8, 2008

**United States Court of Appeals**
**For the District of Columbia Circuit**

**No. 06-7108** **September Term 2007**
**02cv01455**
**Filed on: April 8, 2008**

Cynthia G. Wilcox,
Appellee

v.

Charles Sisson and Charles Sisson Revocable Living Trust,
Appellants

Consolidated with 07-7130

**BEFORE**: Henderson, Rogers, and Kavanaugh, Circuit Judges

**ORDER**

Upon consideration of the motion for summary affirmance, the opposition thereto, and the reply, it is

**ORDERED** that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987)(per curiam). The district court did not abuse its discretion in setting the attorney fee award, see Copeland v. Marshall, 641 F.2d 880, 901 (D.C. Cir. 1980), or in denying an evidentiary

hearing on the "payment for testimony" allegations made in support of the Fed. R. Civ. P. 60(b) motion. See Steverson v. GlobalSantaFe Corp., 508 F.3d 300, 305-06 (5th Cir. 2007) (setting out abuse-of discretion standard); Cano v. Baker, 435 F.3d 1337, 1342-43 (11th Cir. 2006); see also Hall v. CIA, 437 F.3d 94, 99 (D.C. Cir. 2006).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**

APPENDIX B—JUDGMENT OF UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT DATED JUNE 18, 2008

**United States Court of Appeals**
**For the District of Columbia Circuit**

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**No. 06-7108** **September Term 2007**
**02cv01455**
**Filed on: June 18, 2008**

Cynthia G. Wilcox,
Appellee

v.

Charles Sisson and Charles Sisson Revocable Living Trust,
Appellants

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Consolidated with 07-7130

**BEFORE**: Henderson, Rogers, and Kavanaugh, Circuit Judges

**ORDER**

Upon consideration of the petition for rehearing and the supplement thereto, it is

**ORDERED** that the petition be denied.

Per Curiam

FOR THE COURT
Mark J. Langer, Clerk

BY: s/
Michael C. McGrail
Deputy Clerk

## APPENDIX C—AFFIDAVIT BY MARTIN F. MCMAHON, ATTORNEY FOR CHARLES SISSON AND THE CHARLES SISSON REVOCABLE LIVING TRUST

### AFFIDAVIT

**In the District of Columbia**

1. I am Martin F. McMahon, defense counsel in this case. I give this affidavit in further support of Defendants' Rule 60 motion.

2. Defendants have been criticized by the Plaintiff for waiting (10) days [actually 9 calendar days] before filing their motion for 60 (b) relief herein, suggesting that a sinister or other purposeful motive triggered the filing. Nothing could be further from the truth.

3. Attached hereto is a timeline of events leading up to the filing of the motion.

4. The major hurdle in drafting and finalizing Mr. Frank's affidavit was his insistence that he did not want to involve his "friend", Gerson Zweifach, in any manner. This was his condition for cooperating with us, even though he had candidly told me, associate Lisa Angelo and legal assistant Mr. Brendan Lill that he had specifically told Mr. Zweifach about the 25% contingency contract that he had entered into with the Plaintiff.

5. After faxing the affidavit to Mr. Frank's office, I had a conversation with him in which he told me that he did not have a problem with the content of the affidavit.

6. In either that conversation or a subsequent one, Mr. Frank told me that he had to run the affidavit by his counsel, Mr. Michael Lewis, in the Frank v. Wilcox litigation then pending in Superior Court.

7. I thereafter heard from Mr. Lewis that he would not allow Mr. Frank to execute the affidavit fearing some kind of reprisal from the plaintiff herein, Ms. Wilcox. In that conversation Mr. Lewis did not cite any factual discrepancy concerning the content of the affidavit.

8. We thereafter finalized the motion by deleting all references to the "Frank Affidavit".

I have read and agree with the content of this document.

_____s/_____
Martin R. McMahon, Esq.

Subscribed and sworn before me, this 16th day of February, 2006.

_____s/_____
Patricia B. Martin
Notary Public, District of Columbia.
My commission expires 3-31-2009

## APPENDIX D—AFFIDAVIT BY BRENDAN LILL, LEGAL ASSISTANT AT THE LAW OFFICE OF MARTIN F. MCMAHON & ASSOCIATES

### AFFIDAVIT

**In the District of Columbia**

I, Brendan Lill, hereby declare the following to be true and correct statements of fact and I submit this affidavit in support of Defendants' fraud on the court motion:

I am currently employed as a Legal Assistant at the law office of Martin. F. McMahon & Associates.

On or about February 1, 2006, I was introduced to one Richard Frank by Mr. Martin McMahon in his office.

Mr. McMahon had requested that I sit in on the meeting he was about to have with Mr. Frank in his office.

Associate attorney Lisa Angelo was also present at this meeting.

During said meeting, I heard Mr. Frank state that sometime in the last quarter of 2001 he entered into an agreement with Ms. Cynthia Wilcox, whereby in exchange for testifying on Ms. Wilcox's behalf, taking photographs of the Dexter Street property, and coordinating with various experts, Mr. Frank would receive 25% of any future award that Ms. Wilcox might receive from the Court.

Upon hearing this statement, I then heard Mr. McMahon ask Mr. Frank if he had told anyone of the agreement he had made with Ms. Wilcox.

In response to Mr. McMahon's question, I heard Mr. Frank reply that he had told attorney Gerson Zweifach about the agreement that he had entered into with Ms. Wilcox.

Upon hearing this statement, I then heard Mr. McMahon ask Mr. Frank how Mr. Zweifach responded.

In response to Mr. McMahon's question I heard Mr. Frank state that Attorney Zweifach said that he did not want to hear about any such agreement.

Shortly after hearing this statement, I heard Mr. McMahon ask Mr. Frank whether or not he would be willing to submit an affidavit attesting to his agreement with Ms. Wilcox.

In response to Mr. McMahon's request, I heard Mr. Frank state that he would be willing to sign an affidavit but that he did not want to involve attorney Zweifach in his affidavit.

I have read and agree with the content of this document.

_____s/_____ 2/16/05_____

Brendan Lill Dated

1150 Connecticut Ave. N.W. Suite 900 Washington, DC 20036

Subscribed and sworn before me, this 16th day of February, 2006.

_____s/_____

Patricia B. Martin,
Notary Public, District of Columbia.
Commission expires 3-31-09.

APPENDIX E—AFFIDAVIT OF ALLISON K. VANN, FORMER EMPLOYEE OF MR. RICHARD FRANK

**AFFIDAVIT**

**In the District of Columbia**

I, Allison K. Vann, hereby declare the following to be true and correct statements of fact:

My name is Allison K. Vann

I am over the age of eighteen (18)

I was working in Mr. Richard Frank's office as an architectural designer during 2002 and 2003.

As part of my duties, I worked with Ms. Cynthia Wilcox, owner of the Dexter Street property.

During the time of my employment, Mr. Frank and Ms. Wilcox were looking to develop various properties, including the Georgetown property which is the subject of litigation.

From bits and pieces of conversation that I picked up in the office and on the job, I learned that Mr. Frank and Ms. Wilcox had an agreement or understanding concerning a lawsuit that Ms. Wilcox had filed against Mr. Charles Sisson. Mr. Frank would testify on behalf of Ms. Wilcox, take photographs of the Dexter Street Property, coordinate with various experts, and do other things of that sort. It was my understanding, based on these conversations, that Mr. Frank would receive a percentage of any award that Ms. Wilcox received in her lawsuit against Mr. Charles Sisson.

I do not know the exact details of the agreement between Mr. Frank and Ms. Wilcox.

Subscribed and sworn before me, this 11th day of April, 2006.

_____s/_____
Allison K. Vann

_____s/_____
Michael J. Orrick,
Notary Public, D.C.
My commission expires March 14, 2008

APPENDIX F—EXCERPTS FROM TRIAL TRANSCRIPTS DATED 8/20/04 A.M (PAGE 100 OF TRIAL TRANSCRIPT)

[BY MR. MCMAHON, defendant's counsel, cross examination of Mr. Edleson, structural expert testifying on behalf of the plaintiff, Ms. Wilcox]
Statement: Your honor, I just wanted to point out that he's [Mr. Edleson] making a lot of statements as to what Richard Frank told him. And it's....
[BY MR. MITAL, plaintiff's counsel]
Statement: He's an expert witness, he's saying what he relied on forming his opinion.
[BY MR. MCMAHON]
Statement: O.K.
[BY THE WITNESS MR. EDLESON]
Statement: It is true, Richard [Frank] did tell me.
[THE COURT]
[Laughs.]
[BY THE WITNESS MR. EDLESON]
Statement: So I went for the books.
[THE COURT]
Statement: All right, now we're all clear on that. And, to the extent that the expert opinion is based on what he was told by Mr. Frank, that's what it's based on.
[BY THE WITNESS MR. EDLESON]
Statement: Correct, that's what started me. So, I carried it forward.

APPENDIX G—EXCERPTS FROM TRIAL TRANSCRIPTS DATED 8/23/04 AM
(PAGE 43 OF TRIAL TRANSCRIPT)

[BY MR. ZWEIFACH, plaintiff's counsel, direct of Mr. Lofgren, cost expert testifying on behalf of the plaintiff, Ms. Wilcox]

Q. .... What was your assignment?

[BY MR LOFGREN]

A. My assignment to review all of the documents that were given to me interrogatories, the complaint, some subsequent testimony at depositions, visit the site, review drawings, engineering reports and estimate the costs to remedy the defects on Dexter Street.

[BY MR. ZWEIFACH]

Q. I was going to get into this in a bit but did you look at photographs?

A. Photographs as well, yes.

Q. Did you speak to Mr. Frank to understand what he .... What was the basis in the record for you to find the things that you wanted to fix or that needed to be fixed?

A. By reviewing the complaint, Richard Frank's deposition and particularly the interrogatories from the engineer. Then the subsequent remedies shown on the drawings.

Q. Okay, you said that you met with Mr. Frank on several occasions, is that right?

A. Yes.

Q. You reviewed the testimony of Mr. Hite?

A. Correct.

Q. Now did you learn about all of the defects all at once?

A. No, it was a little bit of a process. It's difficult going into a home that no longer looks like what is use to, and trying to put a location on a lot of defects that were in writing.